

REMARKS/ARGUMENTS

Claims 1-3, 5, 9, 8, 21, 22 and 25-32 remain pending in this application (hereinafter, the “373 Application”). Claims 1, 25 and 26 are amended to recite a symbol that is rendered visually distinct from a container when the container holds the fluid and when temperature of the container is reduced to the condensation point. The amendments to claims 1, 25 and 26 are fully supported by the '373 Application. For example, as noted by the Examiner, "The specification clearly indicates that the symbol is visually distinct when there is a different water reactivities [*sic.*] in the materials and when the temperature of the container is reduced to the condensation point." Office Action of 5/16/2007, p. 4, lines 1-3. See also ¶¶[0012]-[0014].

All of the aforementioned claims stand rejected under 35 U.S.C. §112, first paragraph and 35 U.S.C. §102. It is believed that the following remarks and the above amendments attend to all issues presented in the Office Action of 16 May 2007. Headings presented below reflect the order of issues presented in the aforementioned Office Action.

1-3. Request for Continued Examination

We thank the Examiner for acknowledging acceptance of Applicant's 02 March 2007 submission, establishment of an RCE and entry of the claim amendments filed 05 February 2007.

4-5. Withdrawn Rejections

We likewise thank the Examiner for indicating withdrawal of the rejections presented 04 December 2006.

6. New Rejections

7-8. Claim Rejections – 35 U.S.C. §112, first paragraph

7. Claims 1-3, 5, 6, 8, 21-22 and 25-32 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner objects to the limitation "wherein the difference in water

reactivities [*sic.*] renders said symbol visually distinct from said container when said container holds said fluid." However, the Examiner next states that "The specification clearly indicates that the symbol is visually distinct when there is a different water reactivities in the materials and when the temperature of the container is reduced to the condensation point." Office Action p. 4, lines 1-3.

Respectfully, claims 1 and 25 recite a symbol-bearing receptacle for a fluid, comprising various elements, including "wherein the difference in water reactivities renders said symbol visually distinct from said container when said container holds said fluid." As noted in MPEP § 2111.03, "The transitional term 'comprising' ... is synonymous with 'including,' 'containing,' or 'characterized by'. The transitional term 'comprising' (and other comparable terms, e.g., 'containing,' and 'including') is 'open-ended' - ***it covers the expressly recited subject matter, alone or in combination with unrecited subject matter.***" MPEP § 2163(II)(a)(1), emphasis added. In other words, "'Comprising' is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim." MPEP § 2111.03, quoting *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 229 USPQ 805 (Fed. Cir. 1986); *In re Baxter*, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948). Hence, claims 1 and 25 recite the essential element of different water reactivities rendering the symbol visually distinct, but they do not preclude visual distinction provided by reduction of container temperature to the condensation point.

Given the open-ended nature of the term "comprising," we submit that claims 1 and 25 (and all pending dependent claims) do meet the written description requirement of 35 U.S.C. §112. However, in order to advance the '373 Application to allowance, claims 1 and 25 are amended to recite that the difference in water reactivities renders said symbol visually distinct from said container when said container holds said fluid and when a temperature of said container is reduced to a condensation point. The Examiner has stated that the specification "clearly indicates" this. See Office Action p. 4, lines 1-3. Hence, these claim amendments are fully supported by the specification. We further submit that these amendments address and overcome the rejection under 35 U.S.C. §112,

first paragraph. We accordingly respectfully request withdrawal of the Examiner's rejection.

8. Claims 1-3, 5, 6, 8, 21-22 and 25-32 also stand rejected as failing to comply with the enablement requirement of 35 U.S.C. §112, first paragraph. The Examiner points to the claim 1 and 25 element "wherein the difference in water reactivities [*sic.*] renders said symbol visually distinct..." and states that "the speciation [*sic.*] does not describe how the symbol is visually distinct." Office Action p. 4, item 8.

We respectfully disagree. It is established patent practice that "[w]hat is conventional or well known to one of ordinary skill in the art need not be disclosed in detail. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d at 1384, 231 USPQ at 94. >See also *Capon v. Eshhar*, 418 F.3d 1349, 1357, 76 USPQ2d 1078, 1085 (Fed. Cir. 2005)...If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met. See, e.g., *Vas-Cath*, 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating 'the description need not be in *ipsis verbis* [i.e., 'in the same words'] to be sufficient')." MPEP § 2163 (II)(A)(3)(a).

The phrase "visually distinct" is well known to those of skill in the art; furthermore, it has conventionally accepted meaning that would be readily understood by laypersons. For example, visually may be defined as "in a visual manner; with respect to sight; by sight." Dictionary.com Unabridged (v 1.1). Random House, Inc., 06/05/2007, Dictionary.com; <http://dictionary.reference.com/browse/visually>. Distinct may be defined as "distinguished as not being the same; not identical; separate...different in nature or quality; dissimilar (sometimes fol. by from): Gold is distinct from iron." Dictionary.com Unabridged (v 1.1). Random House, Inc., 06/05/2007, Dictionary.com; <http://dictionary.reference.com/browse/distinct>.

In summary, something that is "visually distinct" is commonly understood as something that can be distinguished, in a visual manner, as being different from something else, or something that visually stands out from something else. Further evidence of the common-knowledge nature of this phrase may be found on the Internet.

We performed a Google search for the term “visually distinct,” and found more than 153,000 entries. We encourage the Examiner to repeat this search, if confusion about the phrase persists.

We have shown that the phrase “visually distinct” has conventional meaning, hence, per MPEP § 2163 (II)(A)(3)(a), Applicant need not disclose the meaning of this phrase within the written description. However, even if the Examiner disagrees with this point, we must point out that the ‘373 Application does indeed indicate how the symbol is visually distinct. For example, FIG. 4a shows a symbol rendered visually distinct due to differing water reactivities and due to condensation:

“FIG. 4a depicts fluid receptacle assembly 200 after additional of a cold fluid 206 to internal receptacle space 205 of receptacle body 201. The fluid 206 is sufficiently cold to reduce the temperature of receptacle assembly 200 to the condensation point...This causes the formation of condensation beads 207 on the outer surfaces of receptacle body 201...Symbol body 101, on the other hand, is hydrophilic. For this reason, water beads do not form on symbol body 101. Instead, symbol 101 body is coated with a relatively uniform film of water. ***This causes symbol body 101 to differ in appearance from the surrounding surfaces of receptacle body 201, and renders symbol body 101 visually distinct from receptacle body 201.***” Specification p. 5 ¶¶[0029]-[0030], emphasis added; FIG. 4a.

Furthermore,

“Symbols 415 are made visible by passing a coolant through U-tube 408...This cools the exterior wall to the condensation point in the environment where industrial tank 101 is situated, and in turn causes the formation of water beads on the outer surface of industrial tank 101 that surrounds symbols 415 as a consequence of the hydrophobic nature of that surface. ***Symbols 415 become visible because water beads do not form on them as a consequence of their hydrophilic nature.***” Specification p. 7 ¶[0042], emphasis added; FIG. 7;

and

“When beverage mug assembly 300 is filled with a beverage that is sufficiently cold to cause the exterior of beverage mug assembly 300 to reach the condensation point in the environment where beverage mug assembly 300 is situated, *beads of condensation form on mug extensions 316 through 325 because they are hydrophilic. Beads of condensation do not form on mug extensions 307 through 315 because they are hydrophobic...a counterpart of the symbol "X" formed by mug extensions 307 through 315 is created on the substrate in the form of a dry symbol "X" surrounded by droplets or a film of water.*” Specification p. 8 ¶[0045], emphasis added; FIG. 5 .

9. Claim Rejections – 35 U.S.C. §112, second paragraph

Claims 1-3, 5, 6, 8, 21-22 and 25-32 also stand rejected as being indefinite. The Examiner states that the phrase “symbol visually distinct” is unclear and renders the claims vague and indefinite, further stating “It is unclear from the specification what the ‘visually distinct’ is?” Office Action p. 4, item 9, second paragraph.

Respectfully, we submit that a “visually distinct” symbol has clear and commonly understood meaning amongst not only those of skill in the art, but amongst the general public. See arguments presented at section 8, above. If the above arguments do not help the Examiner to understand the phrase in question, we strongly encourage her to telephone Applicant's attorney, Curtis A. Vock, at (720) 931-3011.

CONCLUSION

We submit that the above amendments and remarks address each and every rejection presented in the Office Action of 16 May 2007. We accordingly solicit a notice of allowance for all of claims 1-3, 5, 6, 8, 21, 22 and 25-32.

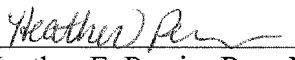
This Amendment and Response is timely filed within the three-month shortened statutory period for reply. Hence, no fees are believed due. However, should any fee be deemed necessary in connection with this Amendment and Response, please charge

Deposit Account No. 12-0600. Should any issues remain outstanding, the Examiner is again encouraged to telephone Applicant's attorney, Curtis A. Vock, at (720) 931-3033.

Respectfully submitted,

LATHROP & GAGE L.C.

By


Heather F. Perrin, Reg. No. 52,884
4845 Pearl East Circle, Suite 300
Boulder, Colorado 80301
Tele: (720) 931-3033
Fax: (720) 931-3001